



## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Notice of Issuance of Final Determination Concerning**

#### **Country of Origin of Fleetcam Vehicle Cameras**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of a vehicle digital video camera known as the FleetCam™. Based upon the facts presented, CBP has concluded that the processing in the United States does not substantially transform the imported digital video cameras for purposes of U.S. Government procurement.

**DATE:** The final determination was issued on May 18, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202-325-0132).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on May 18, 2018, pursuant to subpart B of Part 177, Customs and Border Protection (CBP) Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of the FleetCam™ digital video camera, which may be offered to the United States Government under an undesignated government procurement contract. This

final determination, HQ H294933, was issued under the procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP concluded the country of origin of the finished FleetCam™ was China, where the digital video camera and the camera's firmware were manufactured.

Section 177.29, CBP Regulations (19 CFR § 177.29), provides that a notice of final determination shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR § 177.30), provides that any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: May 18, 2018.

**Alice A. Kipel,**

*Executive Director,*

*Regulations and Rulings,*

*Office of Trade.*

**HQ H294933**

**May 18, 2018**

**OT:RR:CTF:VS H294933 RSD**

**CATEGORY:** Origin

Upneet S. Teji, Esq.  
Greensfelder, Hemker & Gale, P.C.  
220 Madison Street, Suite 3300  
Chicago, Illinois 60606

**RE:** Final Determination of U.S. Government Procurement; Country of Origin  
of a FleetCam™ vehicle camera

Dear Mr. Teji:

This is in response to your eruling request of January 27, 2018, for a final determination on behalf of Forward Thinking Systems LLC, (the Company), concerning the country of origin of a FleetCam vehicle camera pursuant to subpart B of Part 177, U.S. Customs and Border Protection ("CBP") Regulations (19 CFR §177.21 *et. seq.*). We note that the Company is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

The product at issue is referred to as a FleetCam, which is a high-resolution digital video camera installed in a vehicle for streaming and recording images in real time. The FleetCam allows companies who purchase the product to watch the drivers that they employee in real-time, as well as view recorded speeding and other behavior moments. The FleetCam is also able to capture, record, and transmit images of a driver's view of the road ahead. The FleetCam is comprised of a physical digital video camera or several cameras setup together. The product also contains related cabling and a receiver that is compatible for use specifically with the Company's software and mobile applications. To use the FleetCam product, a user must purchase the hardware and a subscription to the software from the Company.

The FleetCam's physical digital video camera is made in China and sourced by the Company from a Chinese firm. The firmware that is loaded onto the camera to allow it to be operational with the Company's software was also developed by the Chinese firm; however, you state that the firmware was developed based upon the design, specifications, and software architecture produced by the Company's staff located in the United States. The firmware developed for the FleetCam is designed specifically for use with the Company's fleet management software. The digital camera

hardware (together with the firmware) is purchased by the Company from a Chinese producer.

The firmware is not loaded onto the camera hardware until it is received by the Company in the United States. Upon receipt of the camera and the firmware code, the Company's engineers load and install the firmware on the camera hardware at the Company's offices in the United States. An additional hardware component of the FleetCam product is the telematics gateway unit (the "cabling"). The cabling units, including the receivers, are purchased from one or more manufacturers, and they are manufactured and procured from other TAA-compliant jurisdictions. The digital camera contains dual SD Cards that allow it to internally record the events that took place.

The basic software component of the FleetCam product is produced in the United States. In addition, other than the firmware development for the camera hardware, all of the FleetCam software (including without limitation, software applications and mobile applications) are designed, developed, and integrated with the Company's cloud service in the United States. In order for the FleetCam to be functional and operational, the hardware and the related firmware is installed with the cabling and integrated with the FleetCam software platform. This compilation process occurs entirely in the United States.

The Company sells the FleetCam software as a software-as-a service subscription, whereby the Company's customers enter into a separate subscription for use of the FleetCam software. After purchase of the FleetCam hardware, the Company's customers pay a separate monthly fee for using its proprietary software. The FleetCam hardware and software must be purchased together as part of the same package. Without the FleetCam software, it is stated that the camera and the related components are not operational. If a customer cancels its software subscription, the FleetCam product will no longer be functional.

## **ISSUE:**

Whether the imported components including the digital video camera and cabling for the FleetCam are substantially transformed through the downloading of the Company's proprietary software in the United States so as to make the FleetCam a product of the United States.

## **LAW AND ANALYSIS:**

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of

Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. See 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as "an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with name, character, or use distinct from that of the article or articles from which it was transformed." See 48 C.F.R. § 25.003.

In *Data General v. United States*, 4 C.I.T. 182 (1982), the court determined that the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In the United States, the programming bestowed upon each integrated circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. The essence of the article, its interconnections or stored memory, was established by programming. See also, *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982) (stating the substantial transformation issue is a "mixed question of technology and customs law"); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation); and, HQ 734518, dated June 28, 1993 (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

"The term 'character' is defined as 'one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.'" *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 311 (1992) (citing *Webster's Third New International Dictionary* (1981)). In *National Juice Prods. Ass'n v. United States*, the Court of International Trade applied the "essence test" and found that the fundamental character of orange juice concentrate was not changed by the addition of

water, orange essences, and oils to make frozen concentrated orange juice, and hence, there was no substantial transformation. 10 C.I.T. 48, 628 F. Supp. 978 (1986).

HQ H258960, dated May 19, 2016, reviewed the country of origin of hardware components of certain transceivers in two scenarios that are instructive to the case at issue here. The hardware components of the transceivers were wholly manufactured in a foreign country and imported into the United States. In the first scenario, the transceivers were “blanks” and completely non-functional and specialized proprietary software was developed and downloaded in the United States, making the transceivers functional and compatible with the OEM technology. In the second scenario, the transceivers were preprogrammed with a generic program that was replaced with specialized proprietary software. It was argued that in both scenarios, the imported hardware was substantially transformed by the development, configuration, and downloading operations of the U.S. origin software. In the first scenario, we found that the non-functional transceivers were substantially transformed as a result of downloading performed in the United States, with proprietary software developed in the United States. However, in the second scenario, it was determined that since the transceivers had generic network functionality, programming them merely to customize their network compatibility would not actually change the identity of the imported transceivers. See *also* HQ H241177, dated December 3, 2013. Accordingly, it was determined that the country where the last substantial transformation occurred was China or another Asian country where the hardware components were manufactured.

A similar finding was made in HQ H284523, dated August 23, 2017, where imported tablet computers were preprogrammed with a generic program when they were first imported. The tablets could perform all of the standard functions of an android tablet in their imported condition. After importation, the imported tablets were customized for a particular use as part of a system to collect and transmit a patient’s medical data by the installation of proprietary software. The original tablet had the ability to perform all of previous functions, but it was determined that for ease of use and for other reasons it was best to disable these functions and to consolidate them in one function via the specialized software. It was stated that the general functionality of the tablet was removed and replaced so that it was easier for patients to use the device and access the system. It was also stated that the security of the patient’s medical data would be better protected. In HQ H284523, we noted that it was clear that merely loading the specialized software onto the tablet computer that remained fully functional as a computer would be insufficient to constitute a new and different article of commerce, since all of the functionality of the original computer would be retained.

In this case, the Company’s proprietary software is being installed onto a digital video camera so that the camera can provide live-streaming of a driver and his view of the road from multiple vantage points. In addition, after the software is installed onto the FleetCam, it is able to capture, record, and store footage of particular incidents that may have occurred. While the particular proprietary software is written and downloaded in the United States, we note that the firmware being used to operate the FleetCam, although designed in the United States, was not written in the United States, but in

China. Therefore, similar to HQ H284523, where the tablet could function, in this case, because the digital camera contains SD cards, it can fully function as a digital video camera by capturing images and recording footage. The installation of the proprietary software onto the FleetCam only customizes the digital cameras to the Company's particular use and does not change the basic identity of the imported digital video cameras because they retain all their functions with the same name, character and use of the imported digital video cameras. Therefore, we find that the FleetCam is not substantially transformed by the downloading of the Company's proprietary software onto the imported digital video cameras, and the country of origin of the FleetCam will be China where the main hardware, including the digital cameras and the firmware, is manufactured.

**HOLDING:**

Based on the information presented in this case, the imported digital video cameras are not substantially transformed by the processing performed in the United States. Therefore, the country of origin of the FleetCams is the country where the digital video cameras and the firmware were originally produced, which in this case is China.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the *Federal Register* Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director,  
Regulations and Rulings

[FR Doc. 2018-11091 Filed: 5/23/2018 8:45 am; Publication Date: 5/24/2018]